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In re Application of
Dean L. Engelhardt et al.
Application No. 09/302,816
Filed: February 3, 1998
Attorney Docket No. Enz-52(C)

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: DECISION GRANTING
: PETITION
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This is a decision on the paper styled "Petition to Obtain a Filing Receipt and Application Serial Number under 37 CFR 1.53" filed April 16, 1999, requesting that the above-identified application be accorded a filing date of February 3, 1998 as a continuation application under 37 CFR 1.53(b) based on prior application No. 08/182,621.

Petitioners allege that the original application papers were filed under former 37 CFR 1.60¹ in the Patent and Trademark Office (Office) on February 3, 1998, and subsequently misplaced in the Office. In support, the petition is accompanied by a copy of petitioners' postcard receipt acknowledging receipt in the Office on February 3, 1998 of a "Request for Continuation Application under 37 CFR 1.60" and an "Application." A copy of the original application papers purportedly filed on February 3, 1998 was also supplied.

It is noted that petitioners' postcard receipt does not specify the number of pages of specification and drawings deposited on February 3, 1998. However, in view of petitioners' comments it is presumed that the "Application" indicated on the postcard is the specification and drawings for the above-identified continuation application. A statement included in the copy of the request for a continuation application, supplied with the present petition, verifies the accompanying continuation application papers as a true copy of prior application No. 08/182,621.

Pursuant to MPEP 201.06(a) "a continuation or divisional application filed under 37 CFR 1.60 on or after December 1, 1997, will automatically be treated as an application filed under 37 CFR 1.53(b)." Accordingly, petitioners' February 3, 1998 application filed under former 37 CFR 1.60 should be treated as though it were filed under 37 CFR 1.53(b).

¹ 37 CFR 1.60 was deleted from title 37 of the Code of Federal Regulation effective December 1, 1997. See Notice of Final Rule Fed. Reg. 53132 (October 10, 1997).

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OFFICE OF PETITIONS

The original 37 CFR 1.60 application papers cannot be located. However, in view of the evidence presented, the petition to accord the application a filing date of February 3, 1998 as a continuation application under 37 CFR 1.53(b), is granted. No petition fee is required.

It is noted that the original application papers filed on February 3, 1998 were accompanied by a petition to revive prior application No. 08/182,621. Because the petition to revive was granted in a Decision mailed April 15, 1998, the prior application was pending on February 3, 1998. Therefore, continuity between the above-identified continuation application and prior application No. 08/182,621 has been established.

Since the original application papers cannot be located in the Office, the duplicate papers received April 16, 1999, will be used for examination purposes. The application has been assigned application No. 09/302,816.

Applicant should notify this Office if the original papers are subsequently discovered in the Office so that the present duplicate file can be merged with the original papers and any duplicate filing fee refunded.

The application is being forwarded to the Office of Finance for charging the \$395.00 filing fee to deposit account No. 05-1135, as authorized in the April 16, 1999 copy of the original request for a continuation application.

The application will then be forwarded to Initial Patent Examination Division for further processing as a continuation application under 37 CFR 1.53(b) based on prior application No. 08/182,621 with a filing date of February 3, 1998 using the application papers supplied on April 16, 1999. A filing receipt to that effect will be mailed in due course.

Thereafter, the application will be forwarded to Technology Center Art Unit 1634 for examination in due course.

Any inquiries related to this decision should be directed to James Engel at (703) 308-5106.



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